



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
HAND DELIVERY

Jack Finney
16382 Highway 97
Harrison, Idaho 83833

Re: Unilateral Administrative Order for Removal Action
EPA Docket No. CERCLA-10-2009-0208
Coeur d'Alene Asbestos Kiln Superfund Site
16382 Highway 97, Coeur d'Alene, Kootenai County, Idaho

Dear Mr. Finney:

Enclosed with this letter is a Unilateral Administrative Order ("Order") that has been issued by the United States Environmental Protection Agency ("EPA") pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as "Superfund". The Order requires the performance of a removal action at the Coeur d'Alene Asbestos Kiln Superfund Site ("Site") located near the intersection of State Highway 97 and Burma Road near Coeur d'Alene, Idaho.

Please carefully review the Order so that you understand the work and schedule for conducting the removal action. Following the proper implementation of the removal action, EPA plans to contact you in order to obtain the reimbursement of response costs incurred by EPA for the Site.

If you have any questions about this matter, please contact Earl Liverman, Federal On-Scene Coordinator, at telephone number (208) 651-8709 or email address liverman.earl@epa.gov. If you retain an attorney to represent you in this matter, please have your attorney direct her/his inquiries to Richard Mednick, Associate Regional Counsel, at telephone number (206) 553-1797 or email address mednick.richard@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel D. Opalski".

Daniel D. Opalski, Director
Office of Environmental Cleanup

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Asbestos Kiln Site,
City of Coeur d'Alene,
Kootenia County, Idaho;

Jack Finney, Respondent.

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL ACTION

U.S. EPA Region 10
Docket No. CERCLA-10-2009-0208

Proceeding Under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act, as amended, 42 U.S.C.
§ 9606(a)

I. JURISDICTION

A. This Unilateral Administrative Order for Removal Action ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director of the Office of Environmental Cleanup, Region 10, by Delegation No. R10 14-14-B.

B. This Order requires Jack Finney ("Respondent") to conduct a removal action to abate an imminent and substantial endangerment to the public health, or welfare, or the environment resulting from an actual or threatened release of a hazardous substance at the Coeur d'Alene Site ("Site") located near the intersection of State Highway 97 and Burma Road in Coeur d'Alene, Idaho.

C. EPA has notified the State of Idaho of this action as directed by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

A. This Order applies to and is binding upon Respondent and upon all heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns of Respondent. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or property shall not alter the responsibilities of Respondent under this Order.

B. Respondent shall provide a copy of this Order to its Contractor and Project Coordinator in advance of performance of the removal action.

C. Respondent shall comply with this Order, including all provisions herein, all attachments hereto, and all documents incorporated by reference into this Order.

III. FINDINGS OF FACT

A. Respondent is the owner of several acres of property located near North Burma Road and Highway 97 in Coeur d'Alene, Idaho.

B. There was a kiln measuring approximately 45 feet by 60 feet at the property. This kiln, which was situated on a concrete slab, was demolished by Respondent in 2005. The concrete slab remains.

C. There is scattered asbestos-containing debris on the surface of the soil and concrete slab at the property. This debris includes aluminum siding, metal, fiberglass and foam board insulation, wallboard, bricks and other remnants from demolition of the kiln, and additional materials.

D. The Site includes the asbestos-contaminated property.

E. Analytical results from sampling indicate that there is asbestos on the concrete slab, in the debris, and in the surface soil at the Site. The types of asbestos include amosite and chrysotile.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

A. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The asbestos found at the Site is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

C. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

D. Respondent is liable for the Site as prescribed by Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

E. There is an actual or threatened "release" of a hazardous substance at the Site as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

F. There may be an imminent and substantial endangerment to public health or welfare or the environment at the Site within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

G. The removal action required by this Order is necessary to protect the public health and welfare and the environment within the meaning of Sections 104(a)(1) and 106(a) of CERCLA, 42 U.S.C. §§ 9604(a)(1) and 9606(a).

H. The removal action required by this Order is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

I. The removal action will be performed properly and promptly by Respondent, as directed by Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), so long as such action is undertaken in accordance with this Order.

V. ON-SCENE COORDINATOR

A. EPA has designated Earl Liverman as the Federal On-Scene Coordinator ("OSC"). Respondent shall direct all submissions and notifications required by this Order to the OSC at: U.S. EPA Coeur d'Alene Field Office, 1910 Northwest Boulevard, Suite 208, Coeur d'Alene, Idaho 83814, (208) 664-4858, and liverman.earl@epa.gov.

B. The OSC will oversee implementation of this Order. The OSC has the authority vested by 40 C.F.R. § 300.120, including the authority to halt, conduct or direct removal action at the Site. The absence of the OSC from the Site will not be a basis for halting work unless such action is directed by the OSC.

VI. ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for the Site, EPA hereby orders Respondent to comply with the following provisions, including but not limited to all appendices to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, appended to this Order, or incorporated by reference into this Order.

VII. REMOVAL ACTION

A. Respondent shall conduct a removal action at the Site in accordance with the Action Memorandum attached as Appendix A hereto. This action shall consist of the removal of all asbestos from the Site, and of the proper disposal of this asbestos in a certified landfill.

B. Respondent has submitted a draft Work Plan to EPA which delineates proposed activities for the removal action, and EPA has provided Respondents with revisions which are necessary for this draft Work Plan. Within 10 calendar days of the Effective Date of this Order, Respondent shall incorporate these revisions, verbatim, into the Work Plan, and shall submit this Work Plan to EPA. Once it is revised in this manner, the Work Plan shall be Appendix B hereto.

C. Within 30 calendar days of the Effective Date of this Order, Respondent shall initiate and complete the removal action in accordance with the Work Plan and Action Memorandum. At least 72 hours in advance of the planned performance of the removal action, Respondent shall notify the OSC. Respondent shall not initiate the removal action without first receiving approval to do so from the OSC.

D. Respondent has retained EnviroScience Group ("ESG") as its contractor to perform the removal action. Respondent has also designated Jeff Lambert, P.E., as its Project Coordinator to administer the removal action.

E. During performance of the removal action, Respondent shall comply with the requirements for the health and safety of workers as set forth in the Work Plan.

VIII. REPORTING

A. Within 20 calendar days of completing the removal action, Respondent shall submit a written Report to EPA summarizing the work performed under this Order. The Report shall conform, at a minimum, with the requirements titled "OSC Reports" which are set forth at 40 C.F.R. § 300.165. The Report shall also state the amount of incurred costs, list the quantities and types of materials removed from the Site, discuss the removal and disposal options considered for those materials, list the resulting destinations of those materials, present the analytical results of all sampling and analyses, and include appendices containing copies of all documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

B. The Report shall include the following certification signed by a person who supervised or directed preparation of the Report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the Report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

IX. ENTRY TO PROPERTY

Respondent shall provide employees, contractors, agents, consultants, designees and representatives of EPA with entry to the Site for the purpose of overseeing or conducting sampling, investigations and other removal actions.

X. RECORDS

Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site and the removal action conducted pursuant to this Order, and allow EPA to obtain copies of this information.

XI. OFF-SITE SHIPMENTS

All hazardous substances, pollutants or contaminants removed off-Site shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); 40 C.F.R. § 300.440, and the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987.

XII. COMPLIANCE WITH OTHER LAWS

Respondent shall perform all work required by this Order in accordance with all applicable local; State; and Federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.415(I). All on-Site actions required pursuant to this Order shall, to the extent practicable as determined by EPA, and considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under Federal, State and facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION

A. If any incident or change in Site conditions during the removal action causes or threatens to cause a release of hazardous substances at or from the Site, or an endangerment to the public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take such action in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment. Respondent shall also immediately notify the OSC of the incident or change in Site conditions.

B. In the event of a release of a hazardous substance at or from the Site, Respondent shall immediately notify the OSC and the National Response Center at telephone number (800) 424-8802. Respondent shall also submit a written report to EPA within 7 calendar days following the release, setting forth the events that occurred and the measures taken or to be taken to mitigate the release and to prevent the reoccurrence of such release. This report is in addition to the reporting required by Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

XIV. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

A. Violation of any requirement of this Order may subject Respondent to a civil penalty of up to \$37,500 per violation per day, as provided by Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. Respondent may also be subject to punitive damages of up to three times the amount of any costs incurred by the United States as a result of such violation, as provided by Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

B. Should Respondent violate this Order or any portion hereof, EPA may carry out the necessary actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XV. RESERVATION OF RIGHTS

A. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent to perform additional actions pursuant to CERCLA or any other applicable law.

B. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to the Site.

XVI. OTHER CLAIMS

A. The United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Neither the United States or EPA shall be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, representatives, contractors, or consultants in carrying out actions pursuant to this Order.

B. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

C. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

XVII. MODIFICATIONS

A. Modifications to any plan or schedule may be made by the OSC and shall be memorialized in writing. The rest of this Order, or any portion thereof, may only be modified by the Director of the Office of Environmental Cleanup.

B. In order for Respondent to deviate from any plan or schedule, the Project Coordinator shall submit a written request to the OSC outlining the proposed deviation and the basis therefor. If approval is provided by the OSC, Respondent may deviate from a plan or schedule to the extent allowed by the OSC.

C. No informal advice, guidance, suggestion, or comment by EPA shall relieve Respondent of its obligations to obtain formal approval as may be required by this Order and to comply with all requirements of this Order.

XVIII. NOTICE OF COMPLETION

When EPA determines that the removal action has been performed in accordance with this Order, EPA will so notify Respondent. If EPA determines that any portion of the removal action has not been completed in accordance with this Order, EPA will so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Respondent shall implement the required work in accordance with the EPA notice.

XIX. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review at the EPA Coeur d'Alene Field Office, 1910 Northwest Boulevard, Suite 208, Coeur d'Alene, Idaho 83814. In

order to arrange a review of the Administrative Record, Respondent must contact the OSC at (208) 664-4858 / liverman@epa.gov.

XX. SEVERABILITY

If a court issues an order invalidating any provision of this Order or finds that Respondent has sufficient cause to not comply with a provision herein, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court.

XXI. OPPORTUNITY TO CONFER

A. Respondent may request a conference for the purpose of presenting information or comments to EPA regarding this Order. Respondent has **3 calendar days** from receipt of this Order to request such a conference. In order to make such a request, Respondent must notify the OSC using the contact information provided in Paragraph A of Section V of this Order. If Respondent requests a conference as provided above, such a conference shall be held within **7 calendar days** of receipt of this Order by Respondent.

B. If EPA determines it to be necessary to make any modification to this Order as a result of the information or comments presented by Respondent at a conference held in accordance with Paragraph A above, EPA will so notify Respondent. Unless EPA should inform Respondent otherwise, the effective date of this Order will remain as provided in Section XXIII below.


XXII. INTENT TO COMPLY

Prior to the effective date of this Order, Respondent shall provide notice to EPA of the irrevocable commitment and intent of Respondent to comply with this Order. Such notice shall be made by contacting the OSC using the contact information provided in Paragraph A of Section V of this Order.

XXIII. EFFECTIVE DATE

This Order shall be effective 10 calendar days after receipt of this Order by Respondent.

IT IS SO ORDERED

BY: 
Daniel D. Opalski, Director
Office of Environmental Cleanup, Region 10
U.S. Environmental Protection Agency